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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-ninth session

SUMMARY RECORD OF THE 1491st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 16 August 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft concluding observations concerning the fifteenth and sixteenth periodic reports of Ukraine (CERD/C/59/Misc.24/Rev.2)

1. Ms. McDOUGALL (Country Rapporteur) said that the text before the Committee was a revised draft incorporating amendments made by Committee members.

Paragraphs 1 and 2

2. Paragraphs 1 and 2 were adopted.

Paragraph 3

3. Mr. ABOUL-NASR said that paragraph 3 seemed to contradict paragraph 2. If the State party was "relatively newly independent", how could the Committee be considering its fifteenth and sixteenth reports?

4. The CHAIRMAN explained that the Convention had been ratified and had entered into force in Ukraine in 1969.

5. Ms. McDOUGALL (Country Rapporteur) suggested deleting the words "is a relatively newly independent state that".

6. Mr. SHAHI suggested, instead, replacing them by "is in transition to a free market economy and ...".

7. Mr. ABOUL-NASR said the transition to a free market economy was not relevant to racial discrimination. If the State party had made the statement that it was newly independent, the Committee should take note of that statement, but it should not make that point itself.

8. Mr. RESHETOV, supported by Mr. DIACONU, pointed out that Ukraine's newly independent status was mentioned in the report (para. 2) and had been emphasized by the delegation. That should be reflected in the concluding observations by beginning the sentence with the words "The Committee acknowledges the statement of the State party that it is a relatively newly independent state".

9. Paragraph 3, as amended, was adopted.

Paragraph 4

10. The CHAIRMAN suggested combining the two sentences into one by replacing the words "The Committee particularly welcomes ..." by the words "... and, in particular, ...".

11. Paragraph 4, as amended, was adopted.

Paragraph 5

12. Paragraph 5 was adopted.

Paragraph 6

13. Mr. THORNBERRY suggested replacing the words "ethnic languages" in the second sentence by the words "minority languages".

14. Paragraph 6, as amended, was adopted.

Paragraph 7

15. Paragraph 7 was adopted.

Paragraph 8

16. Mr. ABOUL-NASR asked how abolition of the death penalty was relevant to the Convention.

17. Ms. McDOUGALL (Country Rapporteur) said that the use of the death penalty, like other problematic practices in criminal justice systems, tended to be biased against oppressed racial and ethnic groups.

18. Mr. RESHETOV said that, as far as he knew, there had never been any discussion of the idea that the death penalty had been applied exclusively or chiefly against minorities in Ukraine. Its abolition was a sign of democratization and the implementation of human rights but did not relate specifically to racial discrimination.

19. Mr. DIACONU suggested that, in the light of the discussion, the paragraph should be deleted.

20. Mr. de GOUTTES said he understood the concerns about the relevance of the paragraph to the Convention, but suggested, as a compromise, moving the reference to the abolition of the death penalty to paragraph 4. It could be added to the list of legislative reforms after the words "the creation of an appeals court system" in that paragraph. Paragraph 8 could then be deleted.

21. Ms. JANUARY-BARDILL said she supported the principle of acknowledging and welcoming the abolition of the death penalty, and agreed with Mr. de Gouttes' suggestion.

22. The CHAIRMAN pointed out that, if the Committee felt that abolition of the death penalty was sufficiently significant to warrant a separate paragraph in the concluding observations on Ukraine's report, such a paragraph would have to be included in the concluding observations on all country reports in the interests of equal treatment and fairness.

23. He took it that the Committee wished to move the reference to the abolition of the death penalty to paragraph 4 and to delete paragraph 8.

24. It was so decided.

Paragraph 9

25. Paragraph 9 was adopted.

Paragraph 10

26. Mr. RESHETOV suggested deleting the reference to religious minorities in the third sentence. Existing tension in Ukraine between the Russian Orthodox church and the Ukrainian Orthodox church might only be exacerbated by encouraging the Government to attempt to establish who belonged to which church.

27. Ms. BRITZ suggested deleting the third sentence altogether, since its meaning was implicit in the first sentence.

28. Mr. DIACONU agreed with Ms. Britz's suggestion but, alternatively, would support Mr. Reshetov's proposal to delete the reference to religious minorities. The Convention concerned racial discrimination and religion was relevant only if it led to racial discrimination.

29. Mr. RESHETOV suggested that, in the first sentence, the words "racial and" should also be deleted, given the current difficult situation in the State party with regard to the definition of racial minorities; mention of ethnic minorities was sufficient.

30. Mr. SHAHI agreed that the words "and religious" should be deleted before "minorities" in the third sentence.

31. Ms. McDOUGALL (Country Rapporteur) said she accepted the amendments proposed by Mr. Reshetov and the Chairman, but wished to retain the third sentence and combine it with the fourth sentence; the end of the paragraph would read "... all ethnic minorities, if possible including data disaggregated by gender".

32. Paragraph 10, as amended, was adopted, with a minor drafting change.

Paragraphs 11 and 12

33. Mr. de GOUTTES recalled that in paragraph 4 the Committee had noted with satisfaction the State party's efforts in the area of legal reform and it would therefore be more coherent to replace the word "explicit" by "adequate" in the first sentence of paragraph 11; he further suggested that, since paragraph 12 seemed to repeat the substance of paragraph 11, paragraph 12 could perhaps be deleted.

34. Mr. DIACONU, supported by Mr. de GOUTTES, suggested that paragraphs 11 and 12 should be combined, with the last sentence of paragraph 11 and the first sentence of paragraph 12 being deleted. The words "In particular," should be inserted at the beginning of the current second sentence of paragraph 12.

35. Ms. McDOUGALL (Country Rapporteur) explained that she had included two paragraphs to emphasize the need for legislative measures to ensure full implementation of all the articles of the Convention, with special emphasis given to article 4 in paragraph 12.

36. Ms. BRITZ pointed out that the second sentence of paragraph 11 did stress the need to "take all appropriate legislative measures" with regard to implementation of "the provisions of the Convention" as a whole, and felt paragraph 12 could be deleted.

37. Mr. SHAHI recalled that the Committee had always placed special emphasis on implementation of article 4 and he therefore preferred to combine paragraphs 11 and 12 as suggested by Mr. Diaconu.

38. Ms. McDOUGALL (Country Rapporteur) said she supported the amendment to the first sentence of paragraph 11 proposed by Mr. de Gouttes and the proposal to combine the two paragraphs in the manner proposed by Mr. Diaconu.

39. Paragraphs 11 and 12, as amended, were adopted.

Paragraph 13

40. Mr. PILLAI said that the words "mother tongue" should be deleted, because the Convention did not contain any such reference in its definition of discrimination.

41. Ms. JANUARY-BARDILL wondered whether the word "language" might be substituted.

42. Mr. DIACONU agreed that the reference to "mother tongue" should be deleted and noted that in any case language tended to be one aspect of the national identity of minority groups. He also felt that some specific reference to article 5 of the Convention should be made with regard to the substance of the paragraph.

43. The CHAIRMAN suggested that the words "pursuant to the provisions" should be replaced by "pursuant to article 5".

44. Ms. BRITZ noted that, in order to reflect fully the definition in the Convention (article 1, paragraph 1), the words "mother tongue" should be replaced by "descent".

45. Paragraph 13, as amended, was adopted.

Paragraph 14

46. Mr. DIACONU, supported by Mr. ABOUL-NASR, said that the paragraph was rather long and complicated and suggested deleting the first sentence. He further suggested that, in the

second sentence, the words "about the existence of recourse measures for victims to seek effective legal remedies and" should be inserted following "next periodic report information" and, in the third sentence, that the words "the recourse measures" should be replaced by "such recourse measures", with a full stop following "measures" and the remainder of the sentence being deleted.

47. Ms. McDOUGALL (Country Rapporteur) said that she felt it was important to retain the first sentence, which addressed the Committee's concerns that the existing institutions for enforcing the law and providing remedies did not seem to be functioning as they should. She was also concerned that deletion of the second half of the last sentence would leave out the important issue of ensuring adequate access to the justice system by victims.

48. Mr. THORNBERRY said that the first sentence could be retained, but the words "the" and "that may now exist" could be deleted and the words "being utilized" could be replaced by "utilized sufficiently".

49. Mr. DIACONU said he would not oppose that amendment, but would still like to see the end of the last sentence deleted.

50. Mr. YUTZIS said he considered it important to stress the Committee's concerns about whether or not the existing structures were being used adequately.

51. The CHAIRMAN said that further consideration of paragraph 14 would be suspended pending preparation of a revised draft.

Paragraphs 15 and 16

52. The CHAIRMAN observed that, since the delegation had in fact described the Roma situation during its oral presentation, the first sentence of paragraph 15 could be deleted.

53. Mr. DIACONU asked whether paragraphs 15 and 16 could not be combined, since paragraph 16 simply seemed to give further details about the content of paragraph 15.

54. Ms. McDOUGALL (Country Rapporteur) said she did not oppose combining the two paragraphs but pointed out that paragraph 15 was more general and dealt with violence against the Roma on the part of private individuals, whereas paragraph 16 dealt in particular with violence on the part of State actors such as the police.

55. The CHAIRMAN said that consideration of paragraphs 15 and 16 would be suspended pending redrafting of the text.

Paragraph 17

56. Paragraph 17 was adopted.

Paragraph 18

57. Mr. BOSSUYT said that he recalled the Ukrainian delegation saying that large numbers of Nigerians were involved in drug trafficking - a problem that to his knowledge was not limited to Ukraine - but was not sure if it had actually claimed that 95 per cent of them were drug traffickers. It was in any case quite a step to move from that to accusing the Government of suspecting all Africans or all blacks of drug dealing.

58. Mr. ABOUL-NASR said that the fact must be faced that there was widespread prejudice against blacks in northern countries. What the representatives of the State party had actually said could easily be checked. The wording could perhaps be toned down, but the point had to be made that the Committee objected to the State party's making such slanted accusations and ignoring the far greater culpability of its own native drug kings.

59. Mr. de GOUTTES observed that the entire Committee had heard the delegation say that 95 per cent of the drug traffickers in Ukraine were Nigerians, and all had been surprised and concerned. However, the drafting of the paragraph left something to be desired, and he proposed rewording the first sentence to read: "With reference to the statement by the delegation of the State party in its oral presentation that 95 per cent of drug traffickers were Nigerians, the Committee recommends that the State party ensure that such statistics are not used for racist purposes to stigmatize target people of African origin." That could then be followed by the current second sentence recommending action to counter any tendency in that regard by police and immigration officers.

60. Mr. ABOUL-NASR said that the crucial problem with Mr. de Gouttes' proposal was that he accepted the figure of 95 per cent but cautioned the Government not to use it for racist purposes, whereas the Committee had to challenge such a biased allegation, and then go on to say that such data should not be used wrongly.

61. Mr. YUTZIS said that the problem under discussion was not peculiar to Ukraine. The three ideas the Committee must convey were that it had been surprised and disturbed by the statistics given, that the situation must not be allowed to lead to negative stereotyping that would stigmatize other members of the nationality concerned, and that the State party must take steps to ensure that any tendency in that direction did not escalate.

62. Mr. BOSSUYT proposed an alternative wording: "The Committee noted that, according to the oral presentation of the delegation of the State party, many nationals of an African country" - he thought it better not to name the nationality in the Committee's concluding observations - "were involved in drug trafficking in Ukraine. The Committee draws attention to the fact that nationals of the State party are also involved in such trafficking and recommends that the State party take action to counter any tendency towards racial profiling by the police and immigration officers in that regard." As far as he knew, the Committee had no information allowing it to verify the State party's figures, but information that he had tended to bear out a Nigerian role. Facts were facts and the Committee could not deny them even if it did not like them.

63. Mr. RESHETOV said that he supported Mr. de Gouttes' very good wording, which carefully calculated the possible impact of the Committee's words and at the same time refrained from attacking something that the State party actually did say. He believed the Nigerians should be named as such rather than indirectly, or readers would be left wondering. Furthermore, since there was no evidence whatsoever that there was any tendency in Ukraine to discriminate against or target all blacks as such, he thought that the second sentence recommending action to counter such a tendency among police and immigration officers should be deleted.

64. Mr. ABOUL-NASR said that he could support Mr. de Gouttes' amendment but only on condition that an explicit statement that the Committee rejected the State party's allegation was added.

65. Ms. JANUARY-BARDILL said that the figure of 95 per cent was merely a statistic and should not therefore be treated like a fact. The text should indicate that the singling out of Nigerian drug traffickers led to racial profiling.

66. Ms. McDOUGALL (Country Rapporteur) stated that, in her opinion, the Committee should comment on the statement made by the Ukrainian delegation and object to it, since there were a number of ways of identifying a group of people, and using nationality in that context was unacceptable. Whether or not the information was factual was not the crucial issue.

67. Mr. YUTZIS said that he regretted that the lack of time prevented a general debate on a question directly linked with the Convention. He entirely agreed with Ms. McDougall that statistical data were being used to establish negative stereotyping leading to racial discrimination against a population group. The Committee should therefore offer guidance to the State party in that respect.

68. Mr. TANG Chengyuan suggested that the State party should be requested to provide a detailed breakdown of the figures in the next report.

69. Mr. de GOUTTES proposed that the paragraph should be worded: "The Committee, concerned about the statistics supplied by the delegation of the State party in its oral presentation, according to which the largest number of drug traffickers are persons originating in an African country, recommends that such statistical data should not be used for racist purposes to target single out stigmatize a population group of African origin".

70. Mr. ABOUL-NASR said that he was not willing to support the new drafting either, unless it categorically refuted the statement made by the Ukrainian delegation.

71. The CHAIRMAN noted that it had been agreed that paragraphs 14, 15, 16 and 18 would be redrafted.

The meeting rose at 11.55 a.m.